

REMARKS

Claims 1 through 73 remain pending; no claims are amended.

Reissue Application

The Examiner asserted that the Applicant has not offered to surrender the original patent. The assertion is incorrect. Specifically, Applicant's reissue application Declaration by the assignee, PTO/SB/52(08-99) a form approved by the OMB, expressly states in the highlighted passage on its second page, that:

“I offered to surrender the original grant of the patent, but that patent is lost or has become unavailable.”

35 U.S.C. §1.178(a) provides that:

“[t]he application for a reissue should be accompanied by either ... or if the original [patent] is lost or inaccessible, by a statement to that effect.”

The highlighted statement set forth in the assignee's Declaration that, “that patent is lost or has become unavailable”, is entirely consistent with the requirement of 37 C.F.R. §1.178(a). Accordingly, the Examiner is requested to acknowledge, in subsequent Office correspondence, that the Applicant has complied with the requirements of 37 C.F.R. §1.178.

Defective Reissue Oath/Declaration

The Examiner wrote that the “reissue Oath/Declaration filed with this application is defective because it fails to identify at least one error, which is relied upon to support the reissue application.” Claims 1 through 73 were rejected as “being based upon a defective reissue Oath/Declaration under 35 U.S.C. §251. Applicant respectfully traverses this rejection for the

following reasons.

Applicant's Declaration states that:

"At least one error upon which reissue is based is described as follows:

Pursuant to 37 C.F.R. §1.175, the Applicant believes the original patent to be wholly or partly inoperative or invalid by reason of a defective specification or drawings, and by reason of the patentee claiming more or less than the patentee had the right to claim in the patent.

By way of an example, none of the apparatus claims 1 through 8 provide broad definition of any of Applicant's disclosed processes. Accordingly, independent method claims 9, 12, 13, 15, and 16 broadly define Applicant's disclosed processes in terms of a combination of steps including the color temperatures and gain and cut-off values. Moreover, neither of Applicant's apparatus claims 1 or 5 broadly defined Applicant's control circuit. Accordingly, apparatus claim 39 is presented to broadly define the control circuit in terms of the combination of the input unit and microcomputer. As presented, claims 9 through 73 remedy the foregoing errors and correct the inoperativeness and defectiveness by providing a broader coverage of Applicant's disclosed invention.

All of errors being corrected in this reissue application arose without any deceptive intention on the part of the Applicant."

37 C.F.R. §1.175(a)(1) requires that the Declaration "must also state that:"

"[t]he Applicant believes the original patent to be wholly or partially inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than the patentee had the right to claim, stating at least one error being relied upon as the basis for reissue."

First, Applicant has complied with the requirement of §1.175(a)(1) by stating that "the Applicant believes the original patent to be wholly or partially inoperative or invalid by reason of a defective specification or drawings, and by reason of the patentee claiming more or less than the patentee had the right to claim." The entire language of §1.175(a)(1) has been literally repeated in Applicant's Declaration.

Second, 37 CFR §1.175(a)(1) requires that the Declaration must state: at least one error

being relied upon as the basis for reissue.” In fact, Applicant has identified at least two errors that Applicant has “relied upon as the basis for reissue.” The first of these errors is clearly stated by Applicant’s Declaration which reads:

“By way of an example, none of the apparatus claims 1 through 8 provide broad definition of any of Applicant’s disclosed processes. Accordingly, independent method claims 9, 12, 13, 15, and 16 broadly define Applicant’s disclosed processes *in terms of a combination of steps including the color temperatures and gain and cut-off values.*

Third, Applicant’s reissue Declaration identifies a second error “being relied upon as the basis for reissue” by the Applicant. The reissue Declaration also states that:

“Moreover, neither of Applicant’s apparatus claims 1 or 5 broadly define Applicant’s control circuit. Accordingly, apparatus claim 39 is presented to broadly define the control circuit in terms of the combination of the input unit and microcomputer.”

Fourth, Applicant’s reissue Declaration makes a conclusory statement in support of the one error of the patentee claiming less than the patentee had the right to claim in the patent, by stating,

“As presented, claims 9 through 73 remedy the foregoing errors and correct the inoperativeness and defectiveness by providing broader coverage of Applicant’s disclosed invention.”

In summary, Applicant has stated at least three errors that Applicant has relied upon “as the basis for reissue”, and has fully conformed with 37 CFR §1.175(a)(1). As noted in the foregoing excerpt from Applicant’s reissue Declaration, Applicant noted that “none of apparatus claims 1 through 8 provide *broad definition* of any of Applicant’s disclosed processes.” Applicant’s reissue Declaration continued by stating that reissue “independent method claims 9, 12, 13, 15 and 16 broadly define Applicant’s *disclosed processes* in terms of a combination of

steps including *the color temperatures and gain and cut-off values.*” Applicant’s identification of the failure of apparatus claims 1 through 8 to broadly define Applicant’s processes “in terms of the combination of steps including the color temperature and gain and cut-off values” is “one error being relied upon as the basis for reissue” under 37 C.F.R. §1.75(a)(1).

Additionally, Applicant’s reiteration expressly states that:

“neither of Applicant’s apparatus claims 1 or 5 broadly define Applicant’s control circuit; accordingly, apparatus claim 39 is presented to broadly define the control circuit in terms of the combination of the input unit and microcomputer.”

This is a second identification of an “error being relied upon as the basis for reissue”, namely a failure of claims 1 and 5 to broadly define Applicant’s control circuit, an error that Applicant has addressed with reissue apparatus claim 39 that broadly defines the control circuit in terms of the combination “of the input unit and microcomputer.”

The foregoing excerpts taken from Applicant’s reissue Declaration:

“claims 9 through 73 remedy the foregoing errors in correcting the inoperativeness and defectiveness by providing a broader coverage of Applicant’s disclosed invention.”

Recognition must be given to the fact that 37 C.F.R. §1.175(a)(1) was amended in order to avoid the litany of detail previously required in a reissue Declaration, and that §1.175(a) simply requires not an identification of at least one error, but simply a statement of the existence of at least one error, Applicant’s reissue Declaration fully complies with §1.175(a)(1) by “stating at least one error being relied upon as the basis for reissue.” In view of this demonstration of complete compliance with the rule, this rejection is incorrect and contrary to the revised Rule 1.175(a)(1). Furthermore, claims may only be rejected under the statute. 35 U.S.C. §251 makes no requirement for any statement or any identification of any error in the original patent. In its entirety, §251 of the statute simply requires that:

"whenever any patent is, through error without any deceptive intention, deemed wholly or partially inoperative or invalid ... by reason of the patentee claiming more or less than he had the right to claim in the patent,"

The reissue application may be issued "for the unexpired part of the term of the original patent." Applicant has fully complied with the statute. In view of this demonstration of the absence of any basis for rejecting any claim under 35 U.S.C. §251, and the demonstration of Applicant's statement of at least two errors relied upon as the basis for the reissue, both the rejection of claims 1 through 73 and the objection to the reissue Declaration must be withdrawn.

Recapture

Claims 1 through 73 were separately rejected under 35 U.S.C. §251 as being improperly broadened in a reissue application made and sworn to by the assignee and not the patentee." Applicant respectfully traverses this rejection for the following reasons.

Under 35 U.S.C. §251, the provisions,

"of this title relating to applications for patent may be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent." 35 U.S.C. §251, 4th paragraph.

A copy of the reissue application Declaration by Mr. Chun Geun Choi, the sole inventor, signed and dated by the inventor on the 8th of February 2002, accompanies this Response. Additionally, a postcard receipt confirming the filing of the:

"5. transmittal of Declarations with reissue application Declaration by the assignee (PTO/SB/52); & reissue application Declaration by the inventor (PTO/SB/51) executed"

thereby fully complying with the requirement of 35 U.S.C. §251. If the Declarations by the assignee and the inventor have been lost or misplaced by the Office, the Examiner is requested to

immediately telephone Applicant's undersigned attorney. Absent this, withdrawal of this rejection is required.

In view of the foregoing explanations and remarks, all claims are deemed to be in condition for allowance and immediate reissue. Without further delay, the Examiner is requested to either telephone Applicant's undersigned attorney explaining any deficiencies or impediments to the immediate reissue of this application, or to pass the application to issue.

No fees are incurred by this Response.

Respectfully submitted,



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Folio: P54562RE
Date: 4/4/03
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Applicant: CHUN-GEUN CHOI

S.N.: *to be assigned*

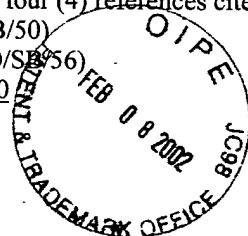
Original Patent No.: 6,025,823 issued on 15 February 2000

Filed: 8 February 2002

For: *COLOR CURVE CONTROL CIRCUIT AND METHOD*

Document(s) filed:

1. Reissue application (specification/claims/abstract)
2. Drawings (Figs. 1-3: 3 sheets) with Request for Approval of Drawing Changes
3. Preliminary Amendment
4. Status of Claims and Support for Claim Changes
5. Transmittal of Declarations with Reissue Application Declaration by the Assignee (PTO/SB/52); & Reissue Application Declaration by the Inventor (PTO/SB/51).....executed
6. Information Disclosure Statement, PTO-1449 & four (4) references cited in the IDS
7. Reissue Patent Application Transmittal (PTO/SB/50)
8. Reissue Application Fee Transmittal Form (PTO/SB/56)
9. Fee transmittal with Check #42002 for \$3,206.00
10. This post card



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